

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73 202(b), ) MM Docket No. 98-112  
Table of Allotments, ) RM-9027  
FM Broadcast Stations. ) RM-9268  
(Anniston and Ashland, Alabama, and College ) RM-9384  
Park, Covington, Milledgeville and )  
Social Circle, Georgia)

**MEMORANDUM OPINION AND ORDER**  
(Proceeding Terminated)

**Adopted: January 8, 2004**

**Released: January 22, 2004**

By the Commission:

1 The Commission has before it a Petition for Reconsideration and Second Motion to Reopen the Record filed by Preston Small ("Small") directed to the earlier Commission *Memorandum Opinion and Order* in this proceeding.<sup>1</sup> WNNX LICO, Inc. filed a Consolidated Opposition to Petition for Reconsideration.<sup>2</sup> Small filed a Reply to Consolidated Opposition to Petition for Reconsideration.<sup>3</sup> We have thoroughly reviewed our *Memorandum Opinion and Order* as well as our previous *Memorandum*

<sup>1</sup> *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia*, 17 FCC Rcd 14830 (2002)

<sup>2</sup> Small has also filed four separate supplements to his Petition for Reconsideration and Second Motion for Leave to Reopen the Record. WNNX LICO, Inc. has filed an Opposition and Response. Each supplement was accompanied by a motion for leave to file the supplement. See 47 C.F.R. § 1.429(d). Consideration of these matters is unwarranted. An alleged *ex parte* violation and a threat of civil action are discussed below. We reject Small's untimely attempt to supplement the record with an "erroneously omitted" statement. See 47 C.F.R. § 1.429(b). Finally, a local court order not to enjoin Small from participating in this proceeding is simply irrelevant to the allocations actions taken in this docket.

<sup>3</sup> On October 29, 2003, Small filed a "Complaint and Request for Investigation" ("Small Complaint") in which he accuses counsel for WNNX LICO of soliciting, and in fact drafting, a letter sent to the Commission on October 8, 2003, by Senator Shelby of Alabama, concerning the delay in concluding the proceeding in MM Docket No. 98-112. Small Complaint at 2-6. Small also filed a Supplement on November 3, 2003. The Shelby letter was referred to the Commission's Office of General Counsel ("OGC"), which sent an October 22, 2003, letter advising the Senator that his letter "cannot be considered" by the Commission because it was not served on the other parties to this proceeding. *Letter to The Honorable Richard Shelby* (OGC Oct. 22, 2003). Small nonetheless demands that we "investigate the role [WNNX LICO and its counsel] played in the effort to improperly influence the Commission's decision making process in the captioned case." Small Complaint at 10. Small's complaint is based entirely on speculation as to WNNX LICO's counsel's alleged involvement in soliciting and preparing Senator Shelby's letter. On November 6, 2003, WNNX LICO counsel filed a "Response" denying any contact with Senator Shelby's office or involvement in preparing the letter. Moreover, as noted the Shelby letter was not considered and, therefore, caused no harm. In these circumstances, we see no basis for further consideration of this matter.

*Opinion and Order* in this proceeding,<sup>4</sup> and find that there are no new facts that would warrant reconsideration of any of our prior orders. Accordingly, we deny the Petition for Reconsideration and Second Motion to Reopen the Record

2 Small raises two additional matters which do not require that we revisit either of our previous decisions in this proceeding. First, Small contends that WNNX LICO should be barred from further participation in this proceeding because it made a prohibited *ex parte* presentation in a separate proceeding regarding the Small Petition for Reconsideration in this proceeding. In this regard, we concur with the recent staff decision that no *ex parte* violation occurred.<sup>5</sup> In making that decision, the staff determined that WNNX LICO did not use the *Auburn* proceeding as a pretext to address the merits of this proceeding and that the presentation did not prejudice Small, who has a full opportunity to respond to those statements in the context of this proceeding. Second, Small contends that principals of the former licensee of Station WWWQ, Sapphire Broadcasting, Inc., "threatened" Small with civil action if he continued to pursue a remedy in this proceeding. In regard to WNNX LICO, Small refers to a 1997 Petition for Reconsideration of the grant of Small's application to sell Station WLRR, in which WNNX LICO referred to the sale as a violation of a contract between Small and Sapphire Broadcasting which would "trigger civil litigation." In addition to the fact that Sapphire Broadcasting is no longer the licensee of Station WWWQ and is not a party in this proceeding, the argument concerning WNNX LICO was not raised earlier and are therefore improper under Section 1.429(b) of the Rules.<sup>6</sup> In any event, Small has failed to establish any nexus between a single statement by WNNX LICO in a 1997 Petition for Reconsideration and the subsequent civil litigation by principals of Sapphire Broadcasting.

3 The Commission is not required to entertain redundant pleadings. As the Court has noted, "the Commission need [not] allow the administrative process to be obstructed or overwhelmed by copious or purely obstructive protests."<sup>7</sup> Moreover, our rules establish limits on a party's right to obtain review by the Commission on any particular matter.<sup>8 9</sup>

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<sup>4</sup> *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia*, 16 FCC Rcd 19857 (2001).

<sup>5</sup> *Auburn, Alabama, et al. ("Auburn")*, 18 FCC Rcd 10333 (MB 2003).

<sup>6</sup> 47 C.F.R. § 1.429(b). Although the Commission addresses the merits of Small's argument, it does not waive the procedural error.

<sup>7</sup> *Office of Communications of United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1996).

<sup>8</sup> See 47 C.F.R. § 1.429(b) (limiting reconsideration of Commission actions to matters involving changed circumstances or facts unknown to petitioner and which could not, through the exercise of ordinary diligence, have been learned previously); see also 47 C.F.R. § 1.429(i) (permitting the staff to dismiss as repetitious a petition for reconsideration of a Commission action denying prior reconsideration petition).

<sup>9</sup> See *Martin-Trigona*, 592 F. Supp. 1566, 1568 (D. Conn. 1984); *Nationwide Communications, Inc.*, 13 FCC Rcd 5654 (1998), see also *Public Notice, Commission Taking Tough Measures Against Frivolous Pleadings*, 11 FCC Rcd 3030 (1996).

4. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration and Second Motion to Reopen the Record filed by Preston Small IS DENIED.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

